No. 329

SUPREME COURT OF THE UNITED STATES

October Term, 1950

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, DIVISION 998, GEORGE KOECHEL, CHARLES BREHM, THOMAS MURACH, RAYMOND KNUTSON, JACK WERY, JOE DERSINZSKI, HOWARD LYNCH, HERMAN WEBER, PAUL BREHM, PAUL KRAFT, STEVE MALICK, WILLIAM BUCHE, GEORGE SLOAN, EDWIN BECKER AND OTHMAR MISCHO,

Petitioners,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE WISCONSIN SUPREME COURT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the Circuit Court for Milwaukee County (R. 101-118) is unreported. The opinion of the Wisconsin Supreme Court (R. 163-171) is reported in 257 Wis. 43, 42 N. W. (2) 471.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257 (3) of Title 28, U. S. C.

QUESTION PRESENTED

May a state, in the exercise of its police power, substitute compulsory arbitration for a strike in a labor dispute between a union and a public utility supplying an essential public utility service where

(1) the utility's operations are local in character and do not involve the "national health or safety" so as to invoke the "emergency" provision of the Taft-Hartley Act (29 U. S. C. § 180) and where

(2) pursuant to statute a court of competent jurisdiction has found that a work stoppage by the union in the supply of such essential public utility service will create an emergency resulting in irreparable injury to the citizens of such state.

STATE AND FEDERAL STATUTES INVOLVED

The pertinent state statutes, sections 111.50 to 111.65, Subchapter III of Chapter 111 of the Wisconsin Statutes for 1949 and the pertinent federal statutes, sections 201 to 212 of the Labor Management Relations Act of 1947, 61 Stat. 152-156, 29 U. S. C. §§ 171 to 182 are printed in the appendix.

STATEMENT

The finding of fact in the trial court was that a work stoppage by the union would work irreparable injury to the citizens of Wisconsin.

SUMMARY OF ARGUMENT

I.

To secure the Writ, Petitioner Must Demonstrate that What Wisconsin has Required, in the Light of What Congress Has Ordered Would Make Actual, Not Argumentative, Inroads on what Congress Has Commanded or Forbidden, or Would Truly Entail Contradictory Duties.

II.

The Case at Bar is Determined by the Principle which has Become the Settled Law that only if the Federal Labor Board is Empowered to Act can State Enactment Conflict with Title I of Labor-Management Relations Act of 1947; The Federal Board has not been so Empowered to Act with Respect to Title I.

III.

Petitioner must Demonstrate that the Disputants are in "Commerce", With Respect to Title II of the Federal Act, That the Federal Mediation Service has been Charged with the Administration of Mediation or Conciliation Procedures which in Some Way Conflict with the Conciliation Provision of the Wisconsin Law Under Consideration Here.

IV.

The Due Process Amendment to the Federal Constitution Does not Interdict Prohibitions on Conduct Found to Threaten the Public Health and Welfare with Irreparable Injury.

V.

The Freedom from Involuntary Servitude Guaranteed by the Federal Thirteenth Amendment is an Individual Freedom and the Wisconsin Act Here Expressly Recognizes This Right.

ARGUMENT

I.

To Secure the Writ, Petitioner Must Demonstrate that What Wisconsin has Required, in the Light of What Congress Has Ordered Would Make Actual, Not Argumentative, Inroads on what Congress Has Commanded or Forbidden, or Would Truly Entail Contradictory Duties.

In substance, petitioner contends that the Wisconsin law applies the conspiracy doctrine; this historically was the basic legal weapon for attacking the labor movement as a whole. The decision *In Re Debs,* (1895) 158 U. S. 564, 15 S. Ct. 900, 39 L. ed. 1092, was based on the general ground that union activities interfered with the employer's right to a free and open market and were, therefore, illegal conspiracies in restraint of trade. To state the basis of the doctrine would seem sufficient to eliminate the necessity for serious consideration of the doctrine in the case at bar.

Responding to petitioners' reasons for granting the writ, we consider its first point.

The contention is: Subchapter III of Chapter 111 of Wisconsin Statutes is in conflict with Sections 7 and 13 of the National Labor Relations Act as amended and, there-

fore, in contravention of Article I, Section 8 and Article VI of the Federal Constitution.

Petitioner contends that the decision in *U. A. A. and A. I. W. of A., C. I. O. v. O'Brien*, (1950) 70 S. Ct. 781, 94 L. ed. 659, is completely determinative of the issue. We refer to the O'Brien decision in which, in the words of the Michigan court, the following situation was presented:

> "A dispute involving wages arose between UAW-CIO union employees and their employer, the Chrysler Corporation. Resort was had to collective bargaining. The notices required by State and Federal law regulating labor disputes were given and mediation sessions between the respective parties followed. While such sessions were pending the union officers concluded that further mediation would be of no avail and thereupon gave notice to the representatives of the Chrysler Corporation that a strike would be called, and such strike did go into effect on the forenoon of the following day. * * *" *International Union, etc. v. McNally*, (1949) 38 N. W. 2d 421, 422.

The unit for which the UAW-CIO was bargaining included Chrystler plants in California and Indiana as well as Michigan.

The *O'Brien case* arose upon application of Union to strike down procedural inconsistency of Michigan law thwarting Union efforts to comply with explicit mediation procedure of Taft-Hartley provisions.

In the O'Brien case, the validity of one of the procedural provisions of the Michigan Labor Mediation Act was before the court. It was found to be in conflict with the procedural provisions of the National Labor Relations Act of 1935, as amended by the Labor-Management Relations

Act of 1947, 61 Stat. 136, 29 U. S. C. Supp. § 141, 29 U. S. C. A. § 141, et seq., in that the mediation and conciliation provisions of the Federal Act encouraging the peaceful settlement of labor disputes ran their course on a different schedule, or timetable, than their counterpart in the Michigan statute.

As was noted in the opinion, the Congress also set out in detail the procedure in disputes which might create national emergencies, but which, as the opinion stated, did not affect that appellant union. Not noted in the opinion, but of interest here, is Section 203 (b), 29 U. S. C. A. Sec. 173b, which directs the Federal Conciliation and Mediation Service to:

> [Sec. 203 (b)]
>
> "* * * avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties * * *."

To comment briefly on the O'Brien decision, we note that it expressly says O'Brien is controlled by the same principle as in *International Union, U. A. W., A. F. of L., Local 232, et al., v. Wisconsin Employment Relations Board, et al.*, (1949) 336 U. S. 245, 69 S. Ct. 516, 93 L. ed. 651.

II.

The Case at Bar is Determined by the Principle which has Become the Settled Law that only if the Federal Labor Board is Empowered to Act can State Enactment Conflict with Title I of Labor-

Management Relations Act of 1947; The Federal Board has not been so Empowered to Act With Respect to Title I.

To dispose of the petition for the writ it is necessary only to consider *International Union, U. A. W., A. F. of L., Local 232, et al., v. Wisconsin Employment Relations Board, et al.*, supra, in relation to Title I of the Labor-Management Relations Act of 1947, and to consider *UAW-CIO v. O'Brien*, supra, in relation to Title II of the Federal Act. In this process it is essential to distinguish, *as did Congress*, between the jurisdictional basis provided under Title I and under Title II.

In invoking the commerce clause as to Title I, the term "affecting commerce" has been employed and it is defined in the Act at Section 2 (7), (29 U. S. C. A. sec. 152 (7)) as follows:

[Sec. 2 (7)]

> "The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Under Title I of the Act, the Federal Labor Board is empowered to determine collective bargaining units within the limits of Section 9 (29 U. S. C. A. § 159) of the Act. The Federal Labor Board is also empowered, within the limits of Section 10 (29 U. S. C. A. § 160) to prevent unfair labor practices. Since Section 8 of the Federal Act lists unfair labor practices by both labor and management, the Federal Board is empowered by Section 10 to prevent any person, either labor or management, from engaging in such

unfair labor practices. Section 7 standing by itself raises no serious obstacle to the reserved State power; nor does the Commerce Clause of the Federal Constitution itself. Mr. Justice Brandeis, dissenting, *Duplex Co. v. Deering*, 254 U. S. 443, 488; see also *Dorchy v. Kansas*, 272 U. S. 306, 311, cited with approval, *Thornhill v. Alabama*, 310 U. S. 88, 103; and see *Hotel and Restaurant Employees' Local v. Wisconsin Employment Relations Board*, 315 U. S. 437. Only as Section 7 is implemented and made operative by Sections 8 and 10 do the rights provided for therein arise. Section 8 (a) announces that it is an unfair labor practice for an *employer* to restrain employees in the exercise of the rights guaranteed by Section 7, and Section 8 (b) announces that it is an unfair labor practice for a *labor organization* to engage in certain listed conduct. There follows Section 10 which empowers the Federal Board to prevent *employers* from engaging in the unfair labor practices listed at Section 8 (a) and to provent a *labor organization* or its agents from engaging in the unfair labor practices listed at Section 8 (b). The empowering section provides:

> [Sec. 10 (a)]
>
> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce, * * *"

Accordingly, it is to management conduct that the unfair labor practices of Section 8 (a) relate; it is these that the Federal Board is empowered to prevent; the exercise of the rights of Section 7 are guaranteed against in-

vasion by management by Section 8 (a) and 10 and against invasion by a labor organization by Sections 8 (b) and 10.

A "person" is defined in Section 2 (1) (29 U. S. C. A. § 152 (1)) as follows:

[Sec. 2 (1)]

> "The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers."

We note that neither the term "person" nor the term "employer" in Section 2 (2) (29 U. S. C. A. § 152 (2)) include any State, or political subdivision thereof. The restraint complained of here, of course, does not stem from employer action, but from action by the State, to protect its citizens, not any disputant.

The Federal Labor Board has been given no power to forbid a strike because its method is illegal, even if the *illegality* were to consist of threatened or actual irreparable injury to public health or welfare. Regulation of such conduct is left wholly to the states.

It seems inescapable then, that the remarks of Senator Taft, set forth by petitioner at pages 16 and 17 of its brief, meant precisely what was said by him: "WE (THE SENATE BILL) have done nothing to outlaw strikes * * *." (Emphasis supplied)

Thus, we submit, Section 7 and Section 13, as thoroughly examined in the *Wisconsin Auto Workers case*, and Sections 8 and 10 as similarly studied in *Algoma Plywood Co. v. Wis. Board*, (1949) 336 U. S. 301, 69 S. Ct. 584, 93 L. ed. 691, have not made otherwise illegal conduct immune from the reserved power of the state, merely because it

is undertaken in concert. And this is particularly true in view of the express holding in the *Wisconsin Auto Workers case*, supra, that to contend settled administrative interpretation of the Act by the Federal Labor Board "has irrevocably labeled all concerted activities 'protected' would be in the teeth of the Board's own language and would deny any effect to the Courts of Appeals' decisions. The latter decisions and our own, *Labor Board v. Fansteel Corp.*, 306 U. S. 240; *Southern S. S. Co. v. Labor Board*, 316 U. S. 31; *Labor Board v. Sands Mfg. Co.*, 306 U. S. 332; *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740; and see *Hotel & Restaurant Employees' Local v. Wisconsin Employment Relations Board*, 315 U. S. 437, clearly interdict any rule by the Board that every type of concerted activity is beyond the reach of the states' adjudicatory machinery." (336 U. S. 257)

It seems clear that the doctrine of the sanctity of the strike weapon has been laid to rest ever since this Court's decisions which sustained a state proscribing the use of this form of economic coercion or its overt concomitants where an objective sought thereby was illegal, or contrary to state public policy or contrary to state statute or contrary to the common law of the state or the work stoppage was for an improper purpose or conducted in an improper manner. Beginning with *Giboney v. Empire Storage and Ice Co.*, 336 U. S. 490, 69 S. Ct. 684, 93 L. ed. 834, the law has been settled. There this Court was careful to point out that it was within the province of the states "to set the limits of permissible contest open to industrial combatants". Although states can not consistently abridge, within the Federal *Constitution*, those guaranteed freedoms to obviate *slight* inconveniences or annoyances, that peti-

tioner recognizes the contingent perils to the public here appears in its brief pp. 18 and 19. Other decisions are: *Algoma Plywood Co. v. Wis. Board,* supra; *Building Service Employees, etc. v. Gazzam,* 70 S. Ct. 784, 94 L. ed. 653; and *International Brotherhood, etc. v. Hanke,* 70 S. Ct. 773; 94 L. ed. 644. As was said in the *Hanke case.*

[94 L. ed. 650]

> "* * * Invalidation here would mean denial of power to the Congress as well as to the forty-eight States."

It has never been seriously contended, irrespective of what a Federal law *could* declare, that any constitutional or moral sanction attaches to the right of industrial combatants to push their struggle to the limits of the justification of self-interest.

III.

Petitioner must Demonstrate that the Disputants are in "Commerce" With Respect to Title II of the Federal Act, That the Federal Mediation Service has been Charged with the Administration of Mediation or Conciliation Procedures which in Some Way Conflict with the Conciliation Provision of the Wisconsin Law Under Consideration Here.

Under Title II of the Act, in invoking the commerce clause, the term "commerce" is used and it is defined in the Act at Section 2 (6), (29 U. S. C. A. § 152 (6)) as follows:

[Sec. 2(6)]

"The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, * * *."

We note that Congress in spelling out the duties and function of the Federal Mediation and Conciliation Service invokes the commerce clause by using the definition under Section 2 (7) although limiting it by Section 203 (b), but carefully avoids use of this definition in the crisis situation by the use of "commerce" as defined by Section 2 (6), above.

Upon the impasse in collective bargaining and the breakdown of mediation and conciliation in "crisis" situations, the Taft-Hartley Act is not silent. However, it gives no power to the National Labor Relations Board. The Federal Labor Board has been granted absolutely no power whatsoever to participate in crises labor situations; the board can take a secret ballot and certify results to the Attorney General. Because it has no power to act, it can neither investigate, approve nor forbid the union conduct in question.

The amending act, under Title II, (sec. 201 to 212 inclusive are set forth in the appendix) delegates to the Federal Mediation Service, to the Attorney General and to the President the details of the procedures of mediation, conciliation and fact-finding in crisis situations. It abruptly stops short of "occupying the field" in the event these procedures fail to settle the dispute. Rather by Section 210 (29 U. S. C. A. § 180) it provides:

[Sec. 210]

"Upon the certification of the results of such ballot or upon a settlement being reached, whichever hap-

pens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, *the President shall submit to the Congress a full and comprehensive report of the proceedings*, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, *together with such recommendations as he may see fit to make for consideration and appropriate action.*" (Emphasis supplied)

The disputants are then theoretically free from Federal control to exercise their powers of economic coercion. We submit that, accordingly, no conflict can arise where the Congress has expressly withheld legislation.

In view of the emphasis placed by petitioner upon the restraint as it applies to the very human conduct in union procedure in "speaking up in meeting" for a strike and voting for a strike and announcing an intention to strike, we note in Section 210 (29 U. S. C. A. 180) that the Congress treats a threatened strike and an actual strike or lock-out in a crisis situation as one and the same. See also Section 111.64, Wis. Stat. 1949.

To close this section of our brief we note the contention of petitioner, at page 19 of its brief, that, even in the absence of a conflict between State and federal law, under Section 10 (a) (29 U. S. C. A. § 160 (a)), the State can not acquire jurisdiction unless it is expressly ceded by the Federal Labor Board. We cite *Algoma Plywood Co. v. Wis. Board*, (1949) 336 U. S. 301. There, in referring to Section 10 (a), the court said:

[336 U. S. 313]

"* * * These words must mean that cession of jurisdiction is to take place only where State and fed-

eral laws have parallel provisions. Where the State and federal laws do not overlap, no cession is necessary because the State's jurisdiction is unimpaired. * * *"

IV.

The Due Process Amendment to the Federal Constitution Does not Interdict Prohibitions on Conduct Found to Threaten the Public Health and Welfare with Irreparable Injury.

(a) Petitioner contends Subchapter III of Chapter 111, in exempting railroads and railroad employees, in effect creates an improper classification and here results in a denial of equal protection under the Federal Fourteenth Amendment.

The burden is on the person attacking the constitutionality of the statute to show the facts which renders the statute unconstitutional. There is neither pleading nor proof that there are any railroads or railroad employees in the State of Wisconsin that are not engaged in interstate commerce, that they are subject to State regulation. In any event, the burden is on petitioner to show that the classification is arbitrary.

(b) Petitioner contends the Federal Fourteenth Amendment interdicts Subchapter III of Chapter 111 of the Wisconsin Act here considered.

It cites *Charles Wolff Packing Company v. Court of Industrial Relations of the State of Kansas*, (1925) 267 U. S. 552, 45 S. Ct. 441, 69 L. ed. 785, in support thereof. We note that cited in the opinion in the *Wolff Packing Company case* is *Wilson v. New et al.*, (1917) 243 U. S. 332, 37

S. Ct. 298, 61 L. ed. 755. The *Wilson case* involved a public utility, and compulsory arbitration was upheld.

(c) Petitioner contends Subchapter III of Chapter 111 of the Wisconsin Statutes is vague and uncertain and consequently a denial of due process under the Federal Fourteenth Amendment.

The duty to determine whether a work stoppage will create a crisis situation seems properly left to the board, whose determinations are to be given due weight in view of its experience, technical competence, and specialized knowledge.

V.

The Freedom from Involuntary Servitude Guaranteed by the Federal Thirteenth Amendment is an Individual Freedom and the Wisconsin Act here Expressly Recognized This Right.

Petitioner contends Subchapter III of Chapter 111 of the Wisconsin Act under consideration here imposes involuntary servitude in violation of the Federal Thirteenth Amendment.

There is nothing in the act that prohibits any employee from quitting and going home.

The effect of the Act is only that if he does so quit, he can not retain that interest or lien on his employment that is accorded an employee who is lawfully on strike. Whether he chooses to remain at work or to terminate his employment he does it at his own free will.

The Federal Thirteenth Amendment protects individual, not collective rights. *Butler v. Perry*, (1916) 240 U. S. 328.

CONCLUSION

The decision below is correct and there is no conflict of decisions or material constitutional question. We respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Wisconsin Statutes

SUBCHAPTER III.

Public Utilities.

111.50 DECLARATION OF POLICY. It is hereby declared to be the public policy of this state that it is necessary and essential in the public interest to facilitate the prompt, peaceful and just settlement of labor disputes between public utility employers and their employes which cause or threaten to cause an interruption in the supply of an essential public utility service to the citizens of this state and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions of employment through collective bargaining between public utility employers and their employes, and to provide settlement procedures for labor disputes between public utility employers and their employes in cases where the collective bargaining process has reached an impasse and stalemate and as a result thereof the parties are unable to effect such settlement and which labor disputes, if not settled, are likely to cause interruption of the supply of an essential public utility service. The interruption of public utility service results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an emergency justifying action which adequately protects the general welfare.

111.51 DEFINITIONS. When used in this subchapter:

(1) "Public utility employer" means any employer (other than the state or any political subdivision thereof) engaged in the business of furnishing water, light, heat, gas, electric power, public passenger transportation or communication, or any one or more of them, to the public in this state; *and shall be deemed to include a rural electrification co-operative association engaged in the business of furnishing any one or more of such services or utilities to its members in this state. Nothing in this subsection shall be interpreted or construed to mean that rural electrification co-operative associations are hereby brought under or made subject to chapter 196 or other laws creating, governing or controlling public utilities, it being the intent of the legislature to specifically exclude rural electrification co-operative associations from the provisions of such laws.* This subchapter does not apply to railroads nor railroad employes. (Italicized matter added by Ch. 37, Laws of 1949)

(2) "Essential service" means furnishing water, light, heat, gas electric power, public passenger transportation or communication, or any one or more of them, to the public in this state.

(3) "Collective bargaining" means collective bargaining of or similar to the kind provided for by subchapter I of this chapter.

(4) "Board" means the Wisconsin employment relations board.

(5) "Arbitrators" refers to the arbitrators provided for in this subchapter.

111.52 SETTLEMENT OF LABOR DISPUTES THROUGH COLLECTIVE BARGAINING AND ARBITRATION. It shall be the duty of public utility employers and their employes in public utility operations to exert every reasonable effort to settle labor disputes by the making of agreements through collective bargaining between the parties, and by maintaining the agreements when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate.

111.53 APPOINTMENT OF CONCILIATORS AND ARBITRATORS. Within 30 days after this subchapter becomes effective, the board shall appoint a panel of persons to serve as conciliators or arbitrators under the provisions of this subchapter. No person shall serve as a conciliator and arbitrator in the same dispute. Each person appointed to said panels shall be a resident of this state, possessing in the judgment of the board, the requisite experience and judgment to qualify such person capably and fairly to deal with labor dispute problems. All such appointments shall be made without a consideration of the political affiliations of the appointee. Each appointee shall take an oath to perform honestly and to the best of his ability the duties of conciliator or arbitrator, as the case may be. Any appointee may be removed by the board at any time or may resign his position at any time by notice in writing to the board. Any vacancy in the panels shall be filled by the board within 30 days after such vacancy occurs. Such conciliators and arbitrators shall be paid reasonable compensation for services and for necessary expenses, in an amount to be fixed by the board, such compensation and expenses to be paid out of the appropriation made to the

board by section 20.585 upon such authorizations as the board may prescribe.

111.54 CONCILIATION. If in any case of a labor dispute between a public utility employer and its employes, the collective bargaining process reaches an impasse and stalemate, with the result that the employer and the employes are unable to effect a settlement thereof, then either party to the dispute may petition the board to appoint a conciliator from the panel, provided for by section 111.53. Upon the filing of such petition, the board shall consider the same, and if in its opinion, the collective bargaining process, notwithstanding good faith efforts on the part of both sides to such dispute, has reached an impasse and stalemate and such dispute, if not settled, will cause or is likely to cause the interruption of an essential service, the board shall appoint a conciliator from the panel to attempt to effect the settlement of such dispute. The conciliator so named shall expeditiously meet with the disputing parties and shall exert every reasonable effort to effect a prompt settlement of the dispute.

111.55 CONCILIATOR UNABLE TO EFFECT SETTLEMENT; APPOINTMENT OF ARBITRATORS. If the conciliator so named is unable to effect a settlement of such dispute within a 15-day period after his appointment, he shall report such fact to the board; and the board, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 2 or 5 persons from the panel provided for in section 111.53. Each party shall alternately strike one name from such list of persons. The person or persons left on the list shall be appointed by the board as

the arbitrator (or arbitrators) to hear and determine such dispute.

111.56 STATUS QUO TO BE MAINTAINED. During the pendency of proceedings under this subchapter existing wages, hours, and conditions of employment shall not be changed by action, of either party without the consent of the other.

111.57 ARBITRATOR TO HOLD HEARINGS. (1) The arbitrator shall promptly hold hearings and shall have the power to administer oaths and compel the attendance of witnesses and the furnishing by the parties of such information as may be necessary to a determination of the issue or issues in disputes. Both parties to the dispute shall have the opportunity to be present at the hearing, both personally and by counsel, and to present such oral and documentary evidence as the arbitrator shall deem relevant to the issue or issues in controversy.

(2) It shall be the duty of the arbitrator to make written findings of fact, and to promulgate a written decision and order, upon the issue or issues presented in each case. In making such findings the arbitrator shall consider only the evidence in the record. When a valid contract is in effect defining the rights, duties and liabilities of the parties with respect to any matter in dispute, the arbitrators shall have power only to determine the proper interpretation and application of contract provisions which are involved.

(3) Where there is no contract between the parties, or where there is a contract but the parties have begun negotiations looking to a new contract or amendment of the

existing contract, and wage rates or other conditions of employment under the proposed new or amended contract are in dispute, the factors, among others, to be given weight by the arbitrator in arriving at decision, shall include:

(a) Comparison of wage rates or other conditions of employment of the utility in question with prevailing wage rates or other conditions of employment in the local operating area involved;

(b) Comparison of wage rates or other working conditions with wage rates or other working conditions maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions in the local operating area involved;

(c) The value of the service to the consumer in the local operating area involved;

(d) Where a public utility employer has more than one plant or office and some or all of such plurality of plants or offices are found by the arbitrator to be located in separate areas with different characteristics, consideration shall be given to the establishment of separate wage rates or schedule of wage rates and separate conditions of employment for plants and offices in different areas;

(e) The overall compensation presently received by the employes having regard not only to wages for time actually worked but also to wages for time not worked, including (without limiting the generality of the foregoing) vacation, holidays, and other excused time, and all benefits received, including insurance and pensions, medical and hospitalization benefits and the continuity and stability of employment enjoyed by the employes. The foregoing

enumeration of factors shall not be construed as precluding the arbitrator from taking into consideration other factors not confined to the local labor market area which are normally or traditionally taken into consideration in the determination of wages, hours and working conditions through voluntary collective bargaining or arbitration between the parties.

111.58 STANDARDS FOR ARBITRATION. The arbitrator shall not make any award which would infringe upon the right of the employer to manage his business or which would interfere with the internal affairs of the union.

111.59 FILING OF ORDER WITH CLERK OF CIRCUIT COURT; PERIOD EFFECTIVE; RETROACTIVITY. The arbitrator shall hand down his findings, decision and order (hereinafter referred to as the order) within 30 days after his appointment; except that the parties may agree to extend, or the board may for good cause extend the period for not to exceed an additional 30 days. If the arbitrators do not agree, then the decision of the majority shall constitute the order in the case. The arbitrator shall furnish to each of the parties and to the public service commission a copy of the order. A certified copy thereof shall be filed in the office of the clerk of the circuit *court* of the county wherein the dispute arose or where the majority of the employes involved in the dispute reside. Unless such order is reversed upon a petition for review filed pursuant to the provisions of section 111.60, such order, together with such agreements as the parties may themselves have reached, shall become binding upon, and shall control the relationship between the parties from the date such order is filed with the clerk of the circuit court, as aforesaid, and shall

continue effective for one year from the date, but such order may be changed by mutual consent or agreement of the parties. No order of the arbitrators relating to wages or rates of pay shall be retroactive to a date before the date of the termination of any contract which may have existed between the parties, or, if there was no such contract, to a date before the day on which the demands involved in the dispute were presented to the other party. The question whether or not new contract provisions or amendments to an existing contract are retroactive to the terminating date of a present contract, amendments or part thereof, shall be matter for collective bargaining or decision by the arbitrator. (Italicized matter added by Ch. 634, Sec. 16, Laws 1949)

111.60 JUDICIAL REVIEW OF ORDER OF ARBITRATOR. Either party to the dispute may within 15 days from the date such order is filed with the clerk of the court, petition the court for a review of such order on the ground (1) that the parties were not given reasonable opportunity to be heard, or (2) that the arbitrator exceeded his powers, or (3) that the order is not supported by the evidence, or (4) that the order was procured by fraud, collusion, or other unlawful means. A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge, as provided by law in other civil cases. The judge of the circuit court shall review the order solely upon the grounds for review herein above set forth and shall affirm, reverse, modify or remand such order to the abitrator as to any issue or issues for such further action as the circumstances require.

111.61 BOARD TO ESTABLISH RULES. The board shall establish appropriate rules and regulations to govern the conduct of conciliation and arbitration proceedings under this subchapter.

111.62 STRIKES, WORK STOPPAGES, SLOWDOWNS, LOCKOUTS, UNLAWFUL; PENALTY. It shall be unlawful for any group of employes of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out his employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor.

111.63 ENFORCEMENT. The board shall have the responsibility for enforcement of compliance with the provisions of this subchapter and to that end may file an action in the circuit court of the county in which any such violation occurs to restrain and enjoin such violation and to compel the performance of the duties imposed by this subchapter. In any such action the provisions of sections 103.51 to 103.63 shall not apply.

111.64 CONSTRUCTION. (a) Nothing in this subchapter shall be construed to require any individual employe to

render labor or service without his consent, or to make illegal the quitting of his labor or service or the withdrawal from his place of employment unless done in concert or agreement with others. No court shall have power to issue any process to compel an individual employe to render labor or service or to remain at his place of employment without his consent. It is the intent of this subchapter only to forbid employes of a public utility employer to engage in a strike or to engage in a work slowdown or stoppage in concert, and to forbid a public utility employer to lock out his employes, where such acts would cause an interruption of essential service.

(b) All laws and parts of laws in conflict herewith are to the extent of such conflict concerning the subject matter dealt with in this subchapter, supplanted by the provisions of this subchapter.

111.65 SEPARABILITY. It is hereby declared to be the legislative intent that if any provision of this subchapter, or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

FEDERAL STATUTES

Labor Management Relations Act of 1947

TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements pro-

vision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of $12,000 per annum. The Director shall not engage in any other business, vocation, or employment.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation

of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (U. S. C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the appli-

cation or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

SEC. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

SEC. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the

expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of $25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's

statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) Members of a board of inquiry shall receive compensation at the rate of $50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several

States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a state-

ment by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE BARGAINING AGREEMENTS, ETC.

SEC. 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under

appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.